



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0783; FRL-9946-66-Region 6]

Approval and Promulgation of Implementation Plans; Arkansas; New Mexico; Oklahoma;

Disapproval of Greenhouse Gas Biomass Deferral, Step 2 and Minor Source Permitting

Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is disapproving severable portions of the February 6, 2012 Oklahoma State Implementation Plan (SIP) submittal that are inconsistent with federal laws based on recent decisions by the United States Courts and subsequent EPA rulemaking. This submittal established Minor New Source Review permitting requirements for greenhouse gas (GHG) emissions and includes Prevention of Significant Deterioration (PSD) permitting provisions for sources that are classified as major, and, thus, required to obtain a PSD permit, based solely on their potential GHG emissions. The PSD permitting provisions also require a PSD permit for modifications of otherwise major sources because they increased only GHG emissions above applicable levels. Additionally, we are disapproving severable portions of SIP submittals for the States of Arkansas, New Mexico, and Oklahoma addressing the EPA's July 20, 2011 rule deferring PSD requirements for carbon dioxide (CO₂) emissions from bioenergy and other biogenic sources ("Biomass Deferral"). We are disapproving the provisions adopting the Biomass Deferral because they are no longer

consistent with federal laws and regulations. The EPA is finalizing this disapproval under section 110 and part C of the Clean Air Act (Act or CAA).

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2015-0783. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, (214) 665-2115, wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our January 11, 2016 proposal. *See* 81 FR 1141. In that document we proposed to disapprove severable portions of the February 6, 2012 Oklahoma SIP submittal establishing GHG permitting requirements for minor sources and for sources that are classified as major, and thus, required to obtain a PSD permit based solely on their potential GHG emissions (referred to as “Step 2” PSD sources in our proposed action) because we determined that these revisions to the Oklahoma SIP establish permitting

requirements that are inconsistent with federal laws resulting from recent decisions by United States Courts. We also proposed to disapprove severable portions of the November 6, 2012 Arkansas SIP submittal, the January 8, 2013 New Mexico SIP, and the January 18, 2013 Oklahoma SIP submittal that include the Biomass Deferral in the Arkansas, New Mexico, and Oklahoma PSD programs. Our analysis found that these revisions to the Arkansas, New Mexico, and Oklahoma SIPs should be disapproved because adoption or implementation of these provisions is no longer consistent with federal laws and regulations for PSD permitting.

II. Response to Comments

We received one comment on our proposed action. Our response to the submitted comment is provided below.

Comment: One commenter stated that “not requiring states to continue step two of the permitting for GHG as a major source thus requiring a PSD or Title V permit is the right decisions based on law.” Additionally, the commenter stated that “GHG emission issues would be better addressed in it’s [sic] own statute rather than having the supreme court [sic] dictate the regulatory framework of GHG emissions.”

Response: We acknowledge the support of the commenter in finding that our proposed disapproval action is consistent with current law. GHG emissions are regulated under the CAA¹ and the CAA includes provisions for citizens, states, and regulated entities to seek judicial review of EPA’s final regulatory decisions². Therefore our current action to disapprove the Step 2 permitting requirements is consistent with current law and is consistent with the statutory requirements of the CAA.

III. Final Action

¹ See section 160 of the Act and the Act’s implementing regulations at 40 CFR section 52.21.

² See section 307 of the Act.

We are taking this final action under section 110 and part C of the Act; as such, we are not imposing sanctions as a result of this disapproval. This final disapproval does not require the EPA to promulgate a Federal Implementation Plan because we are finding that the submitted provisions are inconsistent with federal laws for the regulation and permitting of GHG emissions.

We are disapproving the following severable portions of the February 6, 2012 Oklahoma SIP submittal that establish GHG permitting requirements for minor sources and Step 2 PSD:

- Substantive revisions to the Oklahoma SIP establishing Minor NSR GHG permitting requirements at OAC 252:100-7-2.1 as submitted on February 6, 2012; and
- Substantive revisions to the Oklahoma PSD program in OAC 252:100-8-31 establishing PSD permitting requirements for Step 2 sources at paragraph (E) of the definition of “subject to regulation” as submitted on February 6, 2012.

We are also disapproving as inconsistent with federal laws and regulations for PSD permitting, severable portions of the following SIP submittals that include the Biomass Deferral:

- Substantive revisions to the Arkansas SIP definition of “CO₂ Equivalent Emissions” at Regulation 19, Chapter 2 to implement the Biomass Deferral as submitted on November 6, 2012;
- Substantive revisions to the New Mexico SIP definition of “Subject to Regulation” at 20.2.74.7 (AZ)(2)(a) NMAC to implement the Biomass Deferral as submitted on January 8, 2013; and
- Substantive revisions to the Oklahoma SIP definitions of “carbon dioxide equivalent emissions” at OAC 252:100-1-3 and “subject to regulation” at OAC 252:100-8-31 as submitted on January 18, 2013.

As a result of the final disapproval actions listed above, the EPA is also updating the “Approval status” section of the Arkansas SIP at 40 CFR 52.172, New Mexico SIP at 40 CFR 52.1622, and Oklahoma SIP at 40 CFR 52.1922. Additionally, we are renumbering 40 CFR 52.172 of the Arkansas SIP for consistency.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. We have concluded that the state choices under review in this action do not meet the criteria of the CAA. Accordingly, this action disapproves state law as not meeting Federal requirements for the regulation and permitting of GHG emissions.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. There is no burden imposed under the PRA because this action disapproves submitted revisions that are no longer consistent with federal laws for the regulation and permitting of GHG emissions.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small

entities. This action disapproves submitted revisions that are no longer consistent with federal laws for the regulation and permitting of GHG emissions, and therefore will have no impact on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action disapproves submitted revisions that are no longer consistent with federal laws for the regulation and permitting of GHG emissions, and therefore will have no impact on small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action disapproves provisions of state law that are no longer consistent with federal laws for the regulation and permitting of GHG emissions; there are no requirements or responsibilities added or removed from Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it disapproves state permitting provisions that are inconsistent with federal laws for the regulation and permitting of GHG emissions.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action is not subject to Executive Order 12898 because it disapproves state permitting provisions that are inconsistent with federal laws for the regulation and permitting of GHG emissions.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States

prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 11, 2016.

Ron Curry,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E – Arkansas

2. Section 52.172 is revised to read as follows:

§52.172 Approval status.

With the exceptions set forth in this subpart, the Administrator approves Arkansas's state implementation plan under section 110 of the Clean Air Act. Furthermore, the Administrator finds that the plan satisfies all applicable requirements of Parts C and D, Title I, of the Clean Air Act as amended in 1990, except as noted below.

(a) 1997 PM_{2.5} NAAQS: The SIP submitted March 28, 2008 is disapproved for CAA element 110(a)(2)(D)(ii).

(b) 2006 PM_{2.5} NAAQS: The SIPs submitted March 28, 2008 and September 16, 2009 are disapproved for CAA element 110(a)(2)(D)(ii).

(c) GHGs: The revisions to the Arkansas SIP definition of "CO₂ Equivalent Emissions" at Regulation 19, Chapter 2 to implement the GHG Biomass Deferral as submitted on November 6, 2012 are disapproved.

Subpart GG – New Mexico

3. Section 52.1622 is revised to read as follows:

§52.1622 Approval status.

With the exceptions set forth in this subpart, the Administrator approves New Mexico's state implementation plan under section 110 of the Clean Air Act. Furthermore, the

Administrator finds that the plan satisfies all applicable requirements of Parts C and D, Title I, of the Clean Air Act as amended in 1990, except as noted below.

(a) The revisions to the New Mexico SIP definition of “Subject to Regulation” at 20.2.74.7

(AZ)(2)(a) NMAC to implement the GHG Biomass Deferral as submitted on January 8, 2013 are disapproved.

(b) [Reserved]

Subpart LL – Oklahoma

4. Section 52.1922 is revised to read as follows:

§52.1922 Approval status.

With the exceptions set forth in this subpart, the Administrator approves Oklahoma’s state implementation plan under section 110 of the Clean Air Act. Furthermore, the Administrator finds that the plan satisfies all applicable requirements of Parts C and D, Title I, of the Clean Air Act as amended in 1990, except as noted below.

(a) Revisions to the Oklahoma SIP establishing Minor NSR GHG permitting requirements at OAC 252:100-7-2.1 as submitted on February 6, 2012.

(b) Revisions to the Oklahoma PSD program in OAC 252:100-8-31 establishing PSD permitting requirements for sources that are classified as major and thus required to obtain a PSD permit based solely on their potential GHG emissions (“Step 2 sources”) at paragraph (E) of the definition of “subject to regulation” as submitted on February 6, 2012.

(c) Revisions to the Oklahoma SIP definitions of “carbon dioxide equivalent emissions” at OAC 252:100-1-3 and “subject to regulation” at OAC 252:100-8-31 to implement the GHG Biomass Deferral as submitted on January 18, 2013.